

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GABRIEL F. NAGY,

Plaintiff,

v.

HARRIS M. DE WESE, *et al.*,

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION NO. 09-3995

**ORDER**

**AND NOW**, this \_\_\_\_ day of April, 2010, upon consideration of the motion to dismiss Count III of the first amended complaint filed by defendant Morgan Stanley Smith Barney, LLC (docket no. 19); defendant John Jason Bish's motion for judgment on the pleadings as to Count III (docket no. 20); the motion for judgment on the pleadings as to Count II of the first amended complaint filed by defendants Harris DeWese and Compass Capital Partners, Ltd. (docket no. 22); plaintiff's responses to the defendants' motions; and defendant Morgan Stanley Smith Barney's reply thereto, **IT IS HEREBY ORDERED** that

- (1) the motion of defendants Harris DeWese and Compass Capital Partners, Ltd. for judgment on the pleadings as to Count II (docket no. 22) is **DISMISSED AS MOOT**;
- (2) defendant Morgan Stanley Smith Barney's motion to dismiss Count III (docket no. 19) is **GRANTED IN PART AND DENIED IN PART**. The motion is **DENIED** to the extent that the claim seeks to recover for breach of fiduciary duties owed to the Compass Capital Partners Ltd. Defined Benefit Retirement

Plan (the “Plan”). The motion is **GRANTED** to the extent that the claim seeks to recover for breach of fiduciary duties owed to the Plan’s participants;

- (3) defendant John Jason Bish’s motion for judgment on the pleadings as to Count III (docket no. 20) is **DISMISSED AS MOOT**.

s/ William H. Yohn Jr., Judge  
William H. Yohn Jr., Judge